AK Engineering *and* Local Lodge S-5, Industrial Union of Marine and Shipbuilding Workers of America, District Lodge 4, International Association of Machinists and Aerospace Workers, AFL–CIO. Case 1–CA–29676

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

Upon a charge filed by Local Lodge S-5, Industrial Union of Marine and Shipbuilding Workers of America, District Lodge 7, International Association of Machinists and Aerospace Workers, AFL–CIO, the Union, on November 20, 1992, the General Counsel of the National Labor Relations Board issued a complaint against AK Engineering, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge[1] and complaint, the Respondent failed to file an answer.

On April 19, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On April 21, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated December 14, 1992, notified the Respondent that unless an answer was received by December 21, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

[1] The copy of the charge that was sent to the Respondent by certified mail was returned to the Regional Office marked "unclaimed." However, the Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Chelsea, Massachusetts, has been engaged in the business of ship repair and related services. Annually, the Respondent performs services valued in excess of $50,000 in states other than the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

> All employees of the Respondent as described in a collective-bargaining agreement between the Respondent and the Union, which agreement is effective from August 7, 1991, to August 6, 1994.

Since on or about August 1, 1991, the Union has been the exclusive collective-bargaining representative of the unit employees, and since that date, the Union has been recognized as such representative by the Respondent. This recognition has been embodied in the 1991–1994 contract. At all times since August 1, 1991, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employees.

About July 1992, the Respondent bypassed the Union and dealt directly with its unit employees by making agreements with employees concerning per diem rates, cash differentials, and related conditions of employment at a Groton, Connecticut work location.

About March 1992, the Respondent failed to continue in effect all the terms and conditions of the 1991–1994 contract by failing to maintain health insurance for the unit employees, a mandatory subject for the purposes of collective bargaining. The Respondent took this action without the Union's consent.

Since about June 1992, the Respondent has failed and refused to comply with the contractual grievance procedure as described in the 1991–1994 contract by refusing to schedule and conduct grievance meetings with the Union, a mandatory subject for the purposes of collective bargaining. The Respondent took this action without the Union's consent.

CONCLUSION OF LAW

By dealing directly with its unit employees, failing to maintain health insurance for its unit employees, and refusing to schedule and conduct grievance meet-

ings with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(d) and Section 2(6) and (7), and in violation of Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by dealing directly with its unit employees by making agreements with them concerning per diem rates, cash differentials, and related conditions of employment, we shall order the Respondent to honor its 1991–1994 contract with the Union and to make its unit employees whole for any losses attributable to its unlawful conduct in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Moreover, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to maintain contractually required health insurance for its unit employees, we shall order the Respondent to make whole its unit employees by reinstating the employees' health insurance as required by the 1991–1994 contract, and reimbursing unit employees for any expenses ensuing from its failure to maintain contractually required health insurance since about March 1992 as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons*.

We shall also order the Respondent to comply with the contractual grievance procedures of the 1991–1994 contract by scheduling and conducting grievance meetings with the Union.

ORDER

The National Labor Relations Board orders that the Respondent, AK Engineering, Chelsea, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Bypassing the Union and dealing directly with its unit employees by making agreements with them concerning per diem rates, cash differentials, and related conditions of employment at a Groton, Connecticut work location.

(b) Failing to honor the terms of its 1991–1994 collective-bargaining agreement with the Union by failing to maintain health insurance for its unit employees and by refusing to schedule and conduct grievance meetings with the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the unit set forth in the 1991–1994 collective-bargaining agreement concerning the subject matter of the agreements made with unit employees through direct dealing with them.

(b) On request, rescind agreements with unit employees made through direct dealing with them, and, in any event, make them whole for any losses attributable to its direct dealing.

(c) Reinstate the employees' health insurance as required by the 1991–1994 contract, and reimburse unit employees for any expenses ensuing from its failure to maintain contractually required health insurance as set forth in the remedy section of the decision.

(d) Schedule and conduct grievance meetings with the Union as required by the 1991–1994 contract.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facility in Chelsea, Massachusetts, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. May 20, 1993

James M. Stephens,	Chairman
Dennis M. Devaney,	Member
Clifford R. Oviatt, Jr.,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to bargain collectively with Local Lodge S-5, Industrial Union of Marine and Shipbuilding Workers of America, District Lodge 4, International Association of Machinists and Aerospace Workers, AFL–CIO, as the exclusive representative of our employees by failing to maintain contractually required health insurance for our unit employees and failing to schedule and conduct grievance meetings with the Union.

WE WILL NOT bypass the Union and deal directly with you by making agreements with you concerning per diem rates, cash differentials, and related conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive representative of our unit employees and WE WILL honor all the terms and conditions of our collective-bargaining agreement with the Union, rescinding all agreements with employees concerning per diem rates, cash differentials, and related conditions of employment and making employees whole, with interest, for any losses which they have incurred due to our direct dealing.

WE WILL reinstate unit employees' health insurance and make our employees whole, with interest, for any losses which they may have incurred due to our failure to do so.

WE WILL schedule and conduct grievance meetings with the Union.

AK ENGINEERING